

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXXX

Petitioner

v

File No. 121941-001-SF

Blue Cross Blue Shield of Michigan
Respondent

Issued and entered
this _____ day of November 2011
by R. Kevin Clinton
Commissioner

ORDER

I. PROCEDURAL BACKGROUND

On June 17, 2011, XXXXX (Petitioner) filed a request with the Commissioner of Financial and Insurance Regulation for an external review under Public Act No. 495 of 2006, MCL 550.1951 *et seq.*

The Commissioner immediately notified Blue Cross Blue Shield of Michigan (BCBSM) of the request for external review and asked for the information it used to make its final adverse determination. On June 24, 2011, after a preliminary review of the material submitted, the Commissioner accepted the request.

The Petitioner is enrolled for health care benefits through XXXXX University, a local unit of government self-funded health plan under Act 495. The plan is administered by BCBSM. Section 2(2) of Act 495, MCL 550.1952(2), authorizes the Commissioner to conduct this external review as though the Petitioner were a covered person under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.*

Because this review involves medical issues, the Commissioner assigned the case to an independent review organization, which provided its analysis and recommendation to the Commissioner on July 11, 2011.

II. FACTUAL BACKGROUND

The Petitioner receives health care benefits as an eligible dependent. His benefits are defined in the BCBSM *Community Blue Group Benefits Certificate* (the certificate).

On October 8, 2010, the Petitioner underwent bilateral knee surgery. Postoperatively, his orthopedic surgeon prescribed two cryotherapy units, one for each knee. The mechanical devices use cold temperatures to help reduce pain and swelling. The cost of the equipment totaled \$140.00. BCBSM denied coverage on the basis the devices were not benefits under the Petitioner's plan and could be purchased over-the-counter.

The Petitioner appealed through BCBSM's internal grievance process. After a managerial-level conference, BCBSM maintained its decision and issued a final adverse determination letter dated April 19, 2011.

III. ISSUE

Did BCBSM properly deny coverage for the Petitioner's cryotherapy units?

IV. ANALYSIS

Petitioner's Argument

The Petitioner wrote in his request for external review:

. . . The claim [*for the cryotherapy units*] was submitted by the provider, XXXXX Home Care, which used the procedure code "A9270." . . . This code, for Medicare purposes, anyway, does not describe the procedure, but instead merely states the conclusion that "the procedure is not covered." Blue Cross Blue Shield appears to have accepted that conclusion and denied coverage with the statement "The service isn't payable under your contract."

* * *

In a "managerial-level conference" on April 13, 2011, I explained to the BCBS representative that the cryotherapy units seemed to be more accurately described by code E2018 (water circulating cold pad with pump). Nonetheless, BCBS continued its denial in a final determination dated April 19, 2011. . . BCBS stated, without reference to any section of the policy, that the water circulating cold pad with pump was "not a covered device." Contrary to BCBS claim, Section 5 of the Community Blue Group Benefits Certificate, pages 5.2 & 5.3 . . . states that the rental or purchase of Durable Medical Equipment is covered if it is prescribed by a physician. In Section 7, the Language of Health Care, Durable Medical

Equipment is defined as "Equipment that can withstand repeated use and that is used for a medical purpose by a patient who is ill or injured. It may be used in the home. . ."

BCBS also claimed that "according to Blue Cross Blue Shield of Michigan's medical policy, cooling devices offer no additional benefit than over-the-counter devices." Not only is this claim contradicted by the orthopedic surgeon who performed the surgery and prescribed the units, but also by studies in respected medical journals.

The Petitioner believes that the cryotherapy units were medically necessary and should be covered benefits.

BCBSM's Argument

In its final adverse determination of April 19, 2011, BCBSM explained its reasons for denying coverage for the cryotherapy units:

Our medical consultant reviewed the documentation. Based on that review, it was determined the water circulating cold pad pump (classified as procedure code E0218) is not a covered device. Additionally, according to Blue Cross and Blue Shield of Michigan's medical policy, cooling devices offer no additional benefit than over-the-counter devices. As a result, we are unable to approve reimbursement.

BCBSM also noted that its medical policy "Heating and Cooling Equipment" states with respect to a water circulating cold pad with pump (p. 2): "Cooling devices or equipment offer no additional benefit than over-the-counter devices and is also a non-covered service."

BCBSM maintains it is not required to provide coverage for the mechanical cryotherapy units because they are not more effective than conventional cryotherapy, i.e., not medically necessary.

Commissioner's Review

The certificate (p. 7.14) states: "A service must be medically necessary to be covered." Medically necessary durable medical equipment (DME) is covered when it meets BCBSM and Medicare guidelines definitions. Section 5 of the certificate states:

Durable Medical Equipment

We pay our approved amount for rental or purchase of durable medical equipment when prescribed by a physician or certified nurse practitioner and obtained from a DME supplier who meets BCBSM qualification standards. In many instances we

cover the same items covered by Medicare Part B as of the date of purchase or rental. In some instances however, BCBSM guidelines may differ. Please call your local customer service center for specific coverage information.

DME items must meet the following guidelines:

- The prescription includes a description of the equipment and the reason for the need or the diagnosis.
- The physician writes a new prescription when the current prescription expires; otherwise, we will stop payment on the current expiration date, or 30 days after the date of death, whichever is earlier.

The question of whether the cryotherapy units were medically necessary was presented to an independent review organization (IRO) for analysis as required by Section 11(6) of the Patient's Right to Independent Review Act, MCL 550.1911(6). The IRO physician reviewer is certified by the American Board of Orthopedic Surgery; is a member of the American Academy of Orthopedic Surgeons; and is in active practice. The IRO report contained the following analysis and conclusion:

Typically, cryotherapy is used following many types of surgery to assist in control of swelling and pain. Motorized cryotherapy units are generally considered a convenience item rather than a medical necessity. The application of ice and compression is present with either device; the convenience of not having to manually change or circulate the fluid differentiates between the two (2) units. Postoperative use generally may be up to seven (7) days, including home use. In the postoperative setting, continuous-flow cryotherapy units have been proven to decrease pain, inflammation, swelling, and narcotic usage. Continuous-flow cryotherapy units provide regulated temperatures through use of power to circulate ice water in the cooling packs.

The available scientific literature is insufficient to document that the use of continuous-flow cooling systems (versus ice packs) is associated with a benefit beyond convenience and patient compliance in the outpatient setting. A meta-analysis showed that cryotherapy has a statistically significant benefit in postoperative pain control, while no improvement in postoperative range of motion or drainage was found. The cryotherapy apparatus is fairly inexpensive, easy to use, has a high level of patient satisfaction, and is rarely associated with adverse events. There is limited information to support active versus passive cryotherapy units. Mechanical circulating units with pumps have not been proven to be more effective than passive hot and cold therapy. The addition of vasopneumatic compression has also not been demonstrated to improve outcomes or to be of long term benefit beyond that of standard passive cryotherapy units.

Reviewer's Decision:

It is the determination of this reviewer that the Cryotherapy device (CPT code E0218-water circulating cold pad with pump) was not medically necessary.

The Commissioner is not required in all instances to accept the IRO's recommendation. However, the IRO recommendation is afforded deference by the Commissioner. In a decision to uphold or reverse an adverse determination, the Commissioner must cite "the principal reason or reasons why the Commissioner did not follow the assigned independent review organization's recommendation." MCL 550.1911(16) (b). The IRO reviewer's analysis is based on expertise and professional judgment and the Commissioner can discern no reason why the recommendation should be rejected in the present case.

The Commissioner accepts the IRO reviewer's conclusion and finds that BCBSM's denial on the basis that the mechanical cryotherapy device offers no additional benefit than over-the-counter devices and is therefore not medically necessary.

V. ORDER

Blue Cross Blue Shield of Michigan's April 19, 2011, final adverse determination is upheld. BCBSM is not required to cover the cryotherapy units that the Petitioner received on October 8, 2010.

This is a final decision of an administrative agency. Under MCL 550.1915(1), any person aggrieved by this Order may seek judicial review no later than 60 days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.

R. Kevin Clinton
Commissioner